

LATEST ANTITRUST NEWS IN CHILE

- **ASILFA sues CENABAST for failure to comply with Court ruling and abuse of dominant position.**
- **Franchisees CRUZ VERDE pharmacies sue their Franchisor for abuse of dominant position.**
- **SUPREME COURT prohibits Alliances between LATAM and BRITISH AIRWAYS, IBERIA and AMERICAN AIRLINES.**

I. Asociación Industrial de Laboratorios Farmacéuticos A.G. (“ASILFA”) sued Central de Abastecimiento del Sistema Nacional de Servicios de Salud (“CENABAST”) before the Defense of the Free Competition Court (“TDLC”) requesting a USD 4 million fine for CENABAST’s failure to comply with a Supreme Court’s judgement dated 22.04.2019 and for its abuse of dominant position.

Oscar A. Corvalán A. (Dalgalarrando & Cía.) represented ASILFA in its lawsuit against CENABAST (the Chilean agency for public supply of pharmaceuticals) for:

1. Failure to comply with a Supreme Court’s judgement ordering CENABAST to begin an amendment process of its general bidding terms (included in CENABAST’s Resolution No. 272/14), given that CENABAST conduct was considered:

- I. An abuse of dominant position by making suppliers bear payment delays and insolvency of buyers from the health industry.
- II. An access barrier to the relevant market.
- III. An anti-competitive imbalance between the rights and obligations of pharmaceutical buyers and their suppliers; and

2. Abuse of its dominant position by continuing to bid as well as carrying out bids in accordance with the bidding terms questioned and prohibited by the aforementioned Supreme Court’s judgement, and even worsening the bidding terms applied by CENABAST since its Resolution No. 341/16.

II. Farmacias Cruz Verde S.A. (“Cruz Verde”) franchisees sue their franchisor Socofar S.A (“Socofar”) for abuse of dominant position demanding a fine of approximately USD 16 million.

Socofar (holder of 72% of the wholesale drug distribution market, vertically integrated to Cruz Verde, holder of approximately 50% of the retail market), was sued for its **abuse of dominant position** by:

1. Forcing its franchisees to bear the costs produced by the discounts agreed by Socofar with certain institutions (Police Force, Army, Health Insurance Companies, etc.).
2. Not transferring the rebates obtained from the suppliers to its franchisees.
3. Unduly charging the franchisees and keeping them uninformed on how they determine prices or discounts applied to said franchisees.
4. Indebting the franchisees by forcing them to keep a mandatory overstock.
5. Discriminating the franchisees and destroying their profits by demanding higher prices than those granted to Socofar's own pharmacies.
6. Unfairly competing with Socofar's franchisees by excluding them from exclusive promotions for its own pharmacies; and
7. Upholding in their franchise agreements an early waiver of implication and recusal grounds of the arbitrators named by Socofar and therefore breaching TDLC's Resolution No. 15/2006.

III. Supreme Court rules on the consultation of ACHET prohibiting LATAM Airlines alliances with British Airways ("BA"), Iberia and American Airlines ("AA") in a May 2019 judgement.

The Chilean Association of Tourism Companies A.G. ("**ACHET**") consulted the TDLC on the risks that through these alliances:

- I. LATAM and AA would reach a 78% market share in the US Route.
- II. LATAM and Iberia would reach a 64% market share in the European Route.
- III. Such scenario worsens with BA's market concentration.

The TDLC approved the operation with mitigation measures. However, the Supreme Court overturned the decision of the TDLC and decided to ban the operation, among other considerations, for:

- (a) **The monopolization of the Santiago / Miami and Santiago / Madrid direct routes.**
- (b) **The operation involved jointly fixing prices, capacity, frequency, itineraries, revenue distribution and a pact in which the airlines could not develop a new product without the prior authorization of their competitors; and**
- (c) **That in the process, the neutralization of the risks of the operation - as a result of the mitigation measures approved by the TDLC - was not proven.**

If you have any questions about this article or need more information on this subject, please contact Felipe Dalgalarrando H. by email to fdalgalarrando@dryc.cl or Oscar Corvalán A. ocorvalan@dryc.cl, or by telephone to any of them +56-2-23830000.

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